

**CLARK COUNTY BOARD OF COMMISSIONERS
AGENDA ITEM**

Issue: Public Hearing: Ordinance proposed by the ACLU of Nevada to Amend Title 2, Chapter 2.12, Sections 2.12.010, 2.121.020, 2.12.080, 2.12.120 and 2.12.160 of the Clark County Code	Back-up:
Petitioner: Virginia Valentine, County Manager	Clerk Ref. #
Recommendation: That the Board of County Commissioners conduct a public hearing; and approve, adopt, and authorize the Chairman to sign an ordinance proposed by the ACLU of Nevada to amend Title 2, Chapter 2.12, Sections 2.12.010, 2.12.020, 2.12.080, 2.12.120 and 2.12.160 of the Clark County Code by adding definitions, revising appointments of inquest hearing officers, adopting new appointment requirements for presiding officers for inquests; making changes to prosecution authority; establishing different inquest procedures for officer involved deaths and changing questioning method; and provide for other matters properly relating thereto.	

FISCAL IMPACT:

None.

BACKGROUND:

Chapter 2.12.080 outlines the process of conducting coroner's inquests in Clark County. Due to an increase in the number of police officer-involved shootings, County staff was directed to meet with community stakeholders and hold public input sessions in order to gather information and review possible changes to the current coroner's inquest process. Staff provided a report on the results of the stakeholder group meetings at the October 2, 2007 BCC meeting and received direction from the Board to prepare an ordinance for introduction that changed the current process as follows:

- 1) Definitions – proposed changes add definitions for prosecutor, officer, qualified magistrate, presiding officer and interested parties. The definition of interested parties expands the current application to include any person that the magistrate deems has an interest in the inquest proceedings.
- 2) Appointment of Presiding Officers – proposed code changes revise the appointment of inquest hearing officers as well as adopts new appointment requirements for presiding officers. The change requires an inquest involving an officer-involved death to be handled by a justice of the peace.

CONDUCTED AS RECOMMENDED—ORDINANCE NOT ADOPTED

Cleared for Agenda

11/20/07 BK

Agenda
Item #

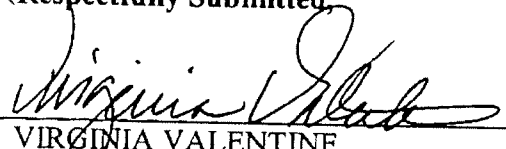
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- 3) Prosecution Authority – proposed code changes allow entities such as the Attorney General's Office to take the place of the District Attorney's Office at an inquest.
- 4) Questioning – proposed code changes require that all unasked questions submitted to the presiding officer during an inquest must be read orally into the record outside the presence of the jury.

An agenda item introducing the revised ordinance with the above changes appears on the current agenda, however, Commissioner Chris Giunchigliani has requested that an alternative version of the revised ordinance that reflects the changes requested by the ACLU also appear on the agenda, in the event that the first item is not adopted by the BCC. The ACLU proposed revisions include all of the areas outlined above except it differs in the proposed questioning methodology. The ACLU proposed code changes would require that interested parties must utilize an attorney duly licensed to practice law in Nevada to ask follow-up questions. These follow up questions would be asked in the presence of a jury and the presiding officer will make a decision on whether a witness should answer the proposed question.

This ordinance was introduced at the November 6, 2007, Board meeting. A public hearing is scheduled for Tuesday, November 20, 2007, at 10 a.m.

Respectfully Submitted,



VIRGINIA VALENTINE,
County Manager

/JBL:ali

Attachment

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BILL NO. 11-6-07-2

SUMMARY – An Ordinance to amend Title 2, Chapter 2.12, Sections 2.12.010, 2.12.020, 2.12.080, 2.12.120 and 2.12.160 of the Clark County Code by adding definitions, revising appointments of inquest hearing officers, adopting new appointment requirements for presiding officers for inquests; making changes to prosecution authority, establishing different inquest procedures for officer involved deaths and changing questioning method.

ORDINANCE NO. _____
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 2, CHAPTER 2.12, SECTIONS 2.12.010, 2.12.020, 2.12.080, 2.12.120 AND 2.12.160 OF THE CLARK COUNTY CODE AS TO CORONER'S INQUESTS BY REVISING DEFINITIONS TO DEFINE "PROSECUTOR, "OFFICER", QUALIFIED MAGISTRATE AND EXPAND INTERESTED PARTIES, ESTABLISHING DIFFERENT INQUEST PROCEDURES FOR OFFICER INVOLVED DEATHS; MAKING CHANGES TO PROSECUTION AUTHORITY; DESIGNATING QUALIFIED MAGISTRATES AS THE ONLY PRESIDING OFFICERS FOR OFFICER INVOLVED DEATHS; AFFIRMING THAT THE PROSECUTOR WILL ACT AS A NEUTRAL PRESENTER OF FACTS; CHANGING THE METHOD OF INCLUDING QUESTIONS FROM INTERESTED PARTIES; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. Title 2, Chapter 2.12, Section 2.12.010 of the Clark County Code is hereby amended to read as follows:

2.12.010 Definitions. (a) "Board" means the county commissioners of Clark County.

(b) "Investigation" means an inquiry by the coroner's office and may include testimony obtained from witnesses under oath.

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(c) "Inquests" mean an inquiry before a ~~coroner's~~ jury, with testimony obtained under oath, duly recorded, and verdict handed down.

(d) "Records" mean those reports duly summarized on a coroner's office form for inclusion in a register or journal whether bound or not.

(e) "Reports" mean those findings in written form, which are filed in the coroner's office, including examinations, witnesses statements, correspondence, insurance forms, and other evidence in support of the conclusions and findings recorded on the official records.

(f) "Autopsy report" means any report of an autopsy, including all reports of laboratory examinations and other technical tests performed.

(g) "Postmortem examination" means an examination of a dead body by a competent pathologist or licensed physician involving the opening and dissection of the body, including the removal of organs and tissues and fluids and other material for microscopic, toxicological, chemical, bacterial, or other examination as deemed necessary to study the cause of death.

"Autopsy" is a synonymous term.

(h) "Medical examiner" means an individual licensed to practice medicine and surgery in the state of Nevada and who, when practicable, shall be a skilled pathologist with training or experience in forensic pathology and certified by the American Board of Pathology or qualified to be so certified.

(i) "Toxicologist" is a specialist in the science dealing with poisons and their effect and with problems involved or connected therewith such as clinical, industrial or medical.

(j) "Prosecutor" is a prosecutor exercising primary authority pursuant to NRS 228.120, NRS 228.125, NRS 228.130, NRS 228.175, NRS 228.177, NRS 252.060, NRS 252.080, NRS 252.100, or NRS 252.110.

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(k) "Officer" is any peace officer as defined by NRS Chapter 289.

(l) "Qualified magistrate" means a Justice of the Peace from any jurisdiction within Clark County who is an attorney duly licensed to practice law in the State of Nevada.

(m) "Presiding Officer" shall mean an individual who presides over the inquest proceedings. If the death is not law-enforcement related, the presiding officer shall be an inquest hearing officer appointed by the Board of County Commissioners and bearing the qualifications specified in 2.12.020(d). If the death is caused by an officer, as defined in 2.12.010 (k), the presiding officer shall be a qualified magistrate as defined by 2.12.010(l).

(n) "Interested Parties" are those individuals permitted to pose questions to the presiding officer to ask witnesses at an inquest. An "interested party" must be identified at the inception of the inquest and is defined as:

(1) A member of the deceased's family within the second degree of consanguinity;

(2) A person or persons causing death or members of said person or person's family within the second degree of consanguinity; or

(3) An attorney duly licensed to practice law in the state of Nevada; or

(4) Any other person that the magistrate deems has an interest in the proceedings.

SECTION TWO. Title 2, Chapter 2.12, Section 2.12.020 of the Clark County Code is hereby amended to read as follows:

2.12.020 Office established—Jurisdiction—Appointment—Salaries and expenses.

(a) There is hereby created and established the office of county coroner for Clark County, Nevada, with jurisdiction coextensive with the boundaries of Clark County, Nevada.

(b) The office of said county coroner and related facilities necessary to the

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administration of the office shall be as designated and provided by the board of county commissioners.

(c) In accordance with Chapter 2.40.100, ~~effective January 1, 2003~~, the county manager shall appoint as county coroner a suitable and qualified person who, serving at the pleasure of the county manager, shall be either (1) the Clark County district health officer, or Clark County health officer, who, ex officio shall serve as county coroner; and (2) a physician, surgeon, or pathologist, duly qualified and licensed under and pursuant to the laws of the state of Nevada to engage in such professional services; or (3) a competent, reputable law enforcement officer having a minimum of at least five years of law enforcement experience in Clark County, Nevada, and also having the requisite responsible experience in public or business administration for the satisfactory administration of said office. The board of county commissioners shall ratify the county manager's appointment at a regularly held commission meeting.

(d) The board of county commissioners shall appoint at least three ~~coroner's~~ inquest hearing officers, who may preside over ~~coroner's~~ inquests that do not involve officer involved deaths. Such officers shall serve at the pleasure of the county commissioners and shall be (1) a member in good standing of the State Bar of Nevada having a minimum of three years experience in courtroom proceedings or other adversary proceedings of a similar nature in Clark County, Nevada; or, (2) some other person who is determined by the board of county commissioners to have sufficient judicial, quasi-judicial experience or have experience as an administrative hearing officer to preside over the inquest.

(e) If the death is caused by an officer as defined by 2.12.010(k), the chief judge from the township where the death occurred shall appoint a qualified magistrate, as defined in 2.12.010(l) to sit as the presiding officer in the inquest.

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(~~ef~~) Any and all necessary costs, salaries, fees and expenses involved in the operation of the county coroner's office shall be processed and approved as are other county claims.

SECTION THREE. Title 2, Chapter 2.12, Section 2.12.080 of the Clark County Code is hereby amended to read as follows:

2.12.080 Inquests — ~~Coroner's Duties~~ and Procedures. (a) When the county coroner or his deputy has been informed that a person has been killed or committed suicide or has suddenly died under circumstances affording reasonable ground to suspect that the death has been occasioned by unnatural means, he shall immediately notify the offices of the ~~district attorney~~ prosecutor and police department or sheriff's office having jurisdiction, so as to afford said ~~district attorney~~ prosecutor and police or sheriff's officials an opportunity to assist in the inquiry as to cause of death.

(b) The coroner shall call an inquest as herein provided if such should be indicated or if such is requested by the ~~district attorney~~ prosecutor, or a judge of the district court within the county, but such inquest need not be conducted in any case of death manifestly occasioned by natural cause, suicide, accident or when the death is publicly known to have been caused by a person already in custody.

(c) In a case where the coroner determines that an officer was involved in the death of an individual, the coroner will call for an inquest, contact the appropriate prosecutor, and utilize the procedure set forth in Section 2.12.020(e) for selection of a presiding officer.

(~~ed~~) If an inquest is called for an incident not involving an officer involved death, the coroner shall either designate an ~~coroner's~~ inquest hearing officer or a willing and qualified magistrate in Clark County to conduct and preside over the inquest.

(~~de~~) The qualified magistrate in Clark County or ~~coroner's~~ inquest hearing officer shall

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be designated as the presiding officer.

(ef) Once a presiding officer is selected, he shall meet with the coroner and representatives of the ~~district attorney's~~ prosecutor's office and determine what evidence and witnesses will be needed in order to conduct an ~~coroner's~~ inquest.

(g) The prosecutor will assist the presiding officer with the preparation for the inquest and work at the direction of the presiding officer. The prosecutor shall serve as a neutral presenter of facts. In this role, the prosecutor shall not act as an advocate for any of the interested parties.

(fh) The presiding officer may also meet prior to the inquest with other interested individuals and obtain a list of witnesses who may be subpoenaed and obtain a list of questions that should be asked of witnesses at the inquest.

(gi) The presiding officer and the coroner shall obtain a copy of all records, exhibits or other evidence that they determine to be relevant to the matter under investigation.

(hj) The presiding officer and the coroner shall ~~then~~ designate a time and place for holding of an ~~coroner's~~ inquest for an incident not involving an officer involved death. The presiding officer shall subpoena all necessary witnesses to testify at this inquest.

(k) The presiding officer shall designate a time and place for holding an inquest for an incident involving an officer involved death. The presiding officer shall subpoena all necessary witnesses to testify at this inquest.

(il) The presiding officer shall request that the Clark County jury commissioner select a panel of fifteen individuals, qualified to serve as an inquest jury panel, to assemble at the time and place previously designated for an ~~coroner's~~ inquest.

(jm) The presiding officer shall preside over the ~~coroner's~~ inquest and shall insure that

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the inquest is conducted as an investigatory proceeding and not an adversarial proceeding. The presiding officer should substantially comply with the following procedure:

(1) Once an inquest is convened, the presiding officer shall select at random seven jurors from the jury panel to sit as an ~~coroner's~~ inquest jury. He shall then conduct a voir dire examination of each juror. If any bias, prejudice or other good and sufficient reason manifests itself during the examination, the juror shall be dismissed and another juror shall be selected.

(2) At the inception of the proceedings, the presiding officer shall identify all interested parties that will be permitted to participate in the proceedings and ~~M~~ make an opening statement indicating that an ~~coroner's~~ inquest is not an adversarial proceeding but a fact finding procedure. and that the presiding officer, the representatives of the district attorney's office and the coroner's jurors will be the only individuals allowed to question witnesses. The presiding officer and the prosecutor will present the evidence to the jury. Following the prosecutor's questions, the jurors will be allowed to ask questions. Thereafter, the interested parties' representative, who must be an attorney duly licensed in the State of Nevada, will be allowed to ask follow-up questions in the presence of the jury. Follow-up questions must be germane to the initial questions and shall not be in a cross-examination format. The presiding officer shall not allow leading or otherwise inappropriate questions to be asked of the witness. Any other interested parties must submit any proposed questions in writing to the presiding officer or the inquest clerk. The presiding officer may in his discretion ask these questions. After hearing the proposed questions, the Presiding Officer may (a) ask the witness the question; or (b) not ask the question As provided in this section, "interested party" is defined as:

(A) ~~Being a member of the deceased's family within the second degree of consanguinity;~~

Text being added is underscored; text being deleted is ~~struck out~~.

~~(B) Being the person or persons causing the death or members of said person or person's family within the second degree of consanguinity; or~~

~~(C) An attorney duly licensed to practice law in the state of Nevada.~~

(3) The presiding officer in his discretion may allow witnesses who are not subpoenaed to testify, after he has reviewed such testimony outside the presence of the coroner's jury.

(4) The examination of witnesses shall be under oath but informal and the usual rules of evidence shall not apply. The presiding officer shall, however, have the authority to control the questioning of witnesses.

(5) The exclusionary rule shall be invoked as to all witnesses that are subpoenaed or that may wish to testify.

(6) The presiding officer shall admonish the coroner's jury at each adjournment of the inquest not to:

(A) Converse among themselves or with anyone else on any subject connected with the inquest;

(B) Read, watch or listen to any report of or commentary on the inquest or any person connected with the inquest by any medium of information, including without limitation newspapers, television and radio; or

(C) If they have not been charged, form or express any opinion on any subject connected with the inquest until the cause is finally submitted to them.

(7) The presiding officer shall have such other authority and power to conduct the inquest as he deems necessary to insure a fair and just coroner's hearing. However, the

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inquest must be conducted so that it is consistent with subsections (~~JM~~)(1) through (6) of this section.

(~~kn~~) Anyone who unreasonably disrupts the inquest or fails to obey the orders of the presiding officer shall be found in contempt of the inquest and may be removed from the proceedings and/or fined one hundred dollars.

(~~lo~~) A single inquest may be held with respect to more than one death, where all of such deaths were occasioned by a common cause.

SECTION FOUR. Title 2, Chapter 2.12, Section 2.12.080 of the Clark County Code is hereby amended to read as follows:

2.12.120 Witnesses – Summoning and examination – Adjournment of inquest. (a) The presiding officer is authorized to issue subpoenas for witnesses, returnable as he may direct, said subpoenas to be served by himself or such person as he may direct. Witnesses at an inquest ~~coroner's~~ inquest shall be compensated as provided in law for witnesses required to attend in the courts of this state and such charge shall be a charge against the county.

(b) The presiding officer may summon and examine as witnesses every person who, in his opinion, or in the opinion of the ~~district attorney~~ prosecutor or any of the jurors, has or may have any knowledge of the facts; and he may also summon a qualified surgeon or physician to inspect and examine the body, or hold a postmortem examination thereon or a chemist to make an analysis of the stomach or the tissues of the deceased and to give their professional opinions as to the cause of the death.

SECTION FIVE. Title 2, Chapter 2.12, Section 2.12.160 of the Clark County Code is hereby amended to read as follows:

2.12.160 Action of ~~district attorney~~ prosecutor after inquest. If the inquest jury finds

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that the person was killed by another under circumstances not excusable or justifiable in law, and the party committing the act is not already in custody, the ~~district attorney~~ prosecutor shall take such action as he or she deems necessary.

SECTION SIX. If any provision, section, paragraph, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this chapter. It is the intent of the county commission in adopting this chapter that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this chapter are declared to be severable.

SECTION SEVEN. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION EIGHT. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the 6th day of November, 2007.

PROPOSED BY: Commissioner Rory Reid

PASSED on the _____ day of _____, 2007.

AYES: COMMISSIONER _____

COMMISSIONER _____

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COMMISSIONER _____

COMMISSIONER _____

COMMISSIONER _____

COMMISSIONER _____

COMMISSIONER _____

NAYS:

COMMISSIONER _____

ABSENT:

COMMISSIONER _____

ABSTAINING:

COMMISSIONER _____

COMMISSIONER _____

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

ATTEST:

BY _____
RORY REID, Chairman

SHIRLEY B. PARRAGUIRRE, County Clerk

20__ This ordinance shall be in force and effect from and after the ____ day of _____.